

240512

Posted: 4/16/03
2:05 p.m.



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 2003-4-12

Issued by the Department of Transportation
on the 16th day of April 2003

Served April 16, 2003

AIRLINE INDUSTRY CONDITIONS

Docket OST-2003-14873 - /

ORDER

As a result of the war in Iraq, the U.S. airline industry's current financial difficulties are being exacerbated by a number of factors. The Department needs to be able to monitor industry developments and to use our authority as appropriate to address industry problems caused by such circumstances. We need to be able to evaluate policy options on the basis of current factual information. We therefore request real time information from the airlines that will enable us to keep abreast of developments, including the airlines' operational, traffic, and financial situations. We now need to obtain additional information from the airlines because there is a substantial time lag in the submission of the information and data that the airlines currently submit to the Department.

For these reasons, we are requiring each of the airlines listed on Attachment A of this Order to provide the reports set forth on Attachment B. We are adopting this order under 49 U.S.C. 41708. Twice weekly reports outlined in Part I of Attachment B will be due by noon (Eastern Time) on Tuesdays and Thursdays of each week. The first twice-weekly report shall be due by close of business on April 22 and shall include weekly data as specified in Attachment B, Part I, as well as daily data for the period April 14 through April 21. The monthly report outlined in Attachment B Part II, which is merely a more timely submission of carriers' Form 41 Financial Information, Schedule P-1(a) Monthly Interim Income Statement (14 C.F.R. Part 241 Section 23), shall be due within five business days following the end of the month for which data are being reported.

To avoid unduly burdening the carriers, we are initially requesting only a few basic data points to monitor the situation on a real-time basis. We may, however, issue further orders seeking additional material if we find that more information is necessary. We urge the airlines to submit the reports required by this order electronically.

We wish to provide the airlines submitting information pursuant to this order every assurance that the reports will be given confidential treatment. We recognize that much of the information

ATTACHMENT A - CARRIER LIST

Mainline Airlines listed in this attachment are responsible for reporting the information requested in Attachment B for mainline operations and for their associated regional and low-fare carriers, as outlined by the chart below. With respect to operations by Mainline Airlines' regional partner(s) marked with an asterisk (*), Mainline Airlines are only required to report traffic and capacity data for these non-wholly owned partner carriers if the carriers have access to this information in the regular course of business.

Mainline Airlines	Regional and Low-fare Carrier Operations Required to be Included
AirTran Airways	Air Wisconsin (operating as AirTran JetConnect)*
Alaska Airlines	Horizon
America West Airlines	Mesa (operating as America West Express)* Chautauqua (operating as America West Express)*
American Airlines	American Eagle Chautauqua (operating as American Connection)* Trans States (operating as American Connection)*
ATA Airlines (formerly American Trans Air)	Chicago Express
Continental Airlines	Continental Express/ExpressJet*
Delta Air Lines	Atlantic Coast (operating as Delta Connection)* Atlantic Southeast Comair Chautauqua (operating as Delta Connection)* Delta Express/Song Skywest (operating as Delta Connection)*
Frontier Airlines	Mesa (operating as Frontier JetExpress)*
JetBlue Airways	
Northwest Airlines	Mesaba* Pinnacle
Southwest Airlines	
United Air Lines	Atlantic Coast (operating as United Express)* Skywest (operating as United Express)* Air Wisconsin (operating as United Express)*
US Airways	Allegheny Piedmont PSA Chautauqua (operating as US Airways Express)* Trans States (operating as US Airways Express)* Mesa (operating as US Airways Express)*

¹ This list is not meant to be all-inclusive. The intent is to capture information on each Mainline Airline's primary/largest regional partners so as to minimize reporting burdens.

ATTACHMENT B – DATA REPORTING REQUIREMENTS AND INSTRUCTIONS

For the purposes of the information requested below, *system-wide* refers to all **scheduled** (i.e., excluding charter) flight operations, including operations by the mainline carrier and wholly owned regional and low-fare subsidiaries or divisions (e.g., in the case of Delta, Comair/Atlantic Southeast and Delta Express, respectively)², and across all geographic entities. To the extent an individual carrier's definition of "system-wide" does not comport with this definition, for instance due to the way it accounts for non-wholly owned regional partner operations, it may use its own definition as long as footnotes are provided that explain any discrepancies.

PART I: BI-WEEKLY SUBMISSIONS

The following information is to be submitted twice each week, by Tuesday noon Eastern time and Thursday noon Eastern time:

1. Provide **Revenue Passenger Miles, Available Seat Miles, Passenger Load Factors, Passenger Yields³, and Enplaned Passengers** for the geographic entities (as defined in Table 1 below) and operating entities listed in Table 2 below. For the first report, provide data by week (Monday-Sunday) starting the week ending January 12, 2003 and ending with the week ending April 13, 2003 and for the same weeks last year as well as daily data for the period April 14 through April 21, 2003 and for the same days of the week last year. For subsequent reports due on Tuesdays, provide daily data for the immediately preceding Thursday, Friday, Saturday, Sunday, and Monday for both this year and for the same days of the week in 2002. For subsequent reports due on Thursdays, provide daily data for the immediately preceding Tuesday and Wednesday for both this year and for the same days of the week in 2002. As an example, the report due on Tuesday, May 6, 2003, will contain data for each day in the period Thursday, May 1, 2003 to Monday, May 5, 2003 and for the comparable period Thursday, May 2, 2002 to Monday, May 6, 2002.

Table 1: Geographic Entity Definitions for this Subpart

Domestic entity: all operations between and within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands; shall also include Canadian transborder operations.

Atlantic entity: operations across the Atlantic Ocean, excluding operations to and from Bermuda which shall be classified into the *Latin American* entity.

Pacific entity: operations across the Pacific Ocean, including the North/Central Pacific, South Pacific (including Australia) and the Trust Territories, excluding Hawaiian operations captured in the *Domestic* entity

Latin American entity: Caribbean operations (including Bermuda and the Guyanas) and Mexican and South/Central American operations.

² In other words, mainline operations plus operations by associated regional and low-fare carriers without an asterisk in the Attachment A table.

³ For yields, individual figures for wholly owned and non-wholly owned carriers as well as low-fare subsidiaries are not required. However, identify the carrier entity operations that are included in system-wide figures. Also, geographic entity figures should include all carrier entities included in the calculation of system-wide yield.

Table 2: Geographic and Operational Entities Required for this Subpart

(Example for Revenue Passenger Miles reporting requirement)

	Thursday April 3, 2003	Thursday April 4, 2002
Revenue Passenger Miles		
System-wide		
Domestic		
Atlantic		
Latin America		
Pacific		
Mainline		
Wholly owned regional carriers (if applicable)		
Low-fare subsidiary/division, e.g. Delta Song (if applicable)		
Non-wholly owned regional carrier 1 (if applicable)		
Non-wholly owned regional carrier 2 (if applicable)		

2. Provide copies of reports prepared in the normal course of business on your daily advance bookings for each of the four geographic entities, including year-over-year and week-over-week comparisons. In your initial submission, to the extent possible, provide any reports prepared in the normal course of business which tracked weekly advance bookings compiled between the week ending January 12, 2003 and the week ending April 20, 2003. Also in your initial submission, provide an explanation of the database and methodology used to produce the analyses presented in the submitted documents. The databases used should contain bookings from all distribution channels (i.e., direct bookings and bookings via third-party distributors).
3. List all **airports** and all **non-stop airport-pair markets** in which ALL scheduled services operated by your airline's mainline and/or its low-fare and regional affiliates have been terminated since March 1, 2003 or will be withdrawn effective as of any date from the date of this order until December 31, 2003, noting its date of effectiveness. If a withdrawal's effectiveness is not indefinite, note its planned resumption date. Update this information with each bi-weekly submission.

PART II: MONTHLY SUBMISSION

The following information is to be submitted on a **monthly basis**, starting with March 2003. The first submission, covering March 2003, will be due April 22 along with the first bi-weekly submission. Subsequent submissions are due within five business days following the end of the previous month.

4. Form 41 Financial Information Schedule P-1(a) Interim Income Statement (14 C.F.R. Part 241 Section 23)

to be submitted involves confidential business information. We have, for example, asked for reports on advance bookings and load factors. We assume, therefore, that much of the information contained in the reports will be confidential, privileged, and proprietary information whose release to the public would cause the submitting airline substantial competitive harm and which is not customarily disclosed to the public. We intend to withhold such confidential information from release under the Freedom of Information Act, as authorized by exemption 4 of that act. 5 U.S.C. 552(b)(4). See also 18 U.S.C. 1905. We will in any event give the airline notice if any person seeks release of any reports submitted by that airline and an additional opportunity to state its reasons for objecting to any release of those reports.

As we see it, a second exemption from the usual disclosure requirements of the Freedom of Information Act is applicable here, exemption 3, 5 U.S.C. 552(b)(3). Exemption 3 exempts from disclosure information whose withholding is authorized or required by another federal statute. Two such federal statutes are applicable here. The first is 49 U.S.C. 46311, which prohibits release of information from air carrier records. This statute applies here because we have asked for information from air carrier records. The second is 49 U.S.C. 40115, which protects information whose disclosure would harm either the competitive position of U.S. airlines engaged in foreign air transportation or the development and implementation of the U.S. position in international aviation negotiations. This statute applies because many of the airlines subject to this order are engaged in foreign air transportation while we are not obtaining information from foreign airlines.

Given our wish to maintain the confidentiality of the information to the greatest extent possible, we are simplifying the procedures for requesting confidential treatment. A request for confidential treatment under our Rule 12 (formerly Rule 39), 14 C.F.R. 302.12, will aid us in both identifying sensitive information and protecting it.

We will use the reports submitted pursuant to this order to enable us to assess the impact on the airline industry of a war in Iraq, to enable us to keep abreast of developments in the airline industry during the coming months, and to respond to requests from the Administration and Congress on the condition of the airline industry. We do not intend to use the reports in any public proceeding. This makes any release of the confidential information additionally unlikely. There will be no proceeding involving parties who might need to obtain access to the confidential information (albeit on a restricted basis) in order to present their position on the issues in the case.

As discussed above, airlines will be submitting reports to us several times each month during the effective period of this order. An airline may file one motion for confidential treatment covering all of the material submitted pursuant to this order rather than file a separate motion for each separate submission, but the original motion should list all of the categories of reports which the airline is expecting to file pursuant to that order and explain why each category of report is entitled to confidential treatment.

The reports shall be submitted to Randall Bennett, Director, Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street SW, Room 6401, Washington, DC 20590.

Electronic submissions to the following e-mail address are strongly encouraged: X50airinfo@ost.dot.gov. Each airline listed on Attachment A shall designate an individual *at its corporate headquarters* responsible for the submission of these documents who shall serve as our point of contact.

The reporting requirements imposed by this order shall terminate on June 30, 2003, unless an extension of the requirement appears necessary. Accordingly, no airline will be required to retain copies of the reports required by this order beyond June 30, 2003.

We have complied with the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, for this information directive.

ACCORDINGLY, pursuant to 49 U.S.C. 40113 and 41708, the Department finds it necessary to compel the submission of certain reports and to take action, as follows:

1. Each of the airlines listed on Attachment A shall submit to the address above information responsive to the narrative request in Attachment B, Part I, on a twice-weekly basis (due noon on Tuesday and noon on Thursday of each week). As outlined on Attachment B, Part II, each of the airlines listed on Attachment A shall also submit to the address above the monthly Form 41 Schedule P-1(a) Interim Income Statement (14 C.F.R. Part 241 Section 23) on an expedited basis, due within five business days following the end of the month for which data are being reported. The first twice-weekly submission will be required by close of business on April 22 and shall include weekly data as specified in Attachment B, Part I, as well as daily data for the period April 14 through April 21. All subsequent bi-weekly reports should be submitted to us no later than noon Eastern Time on each Tuesday and Thursday of each week. The first accelerated monthly submission (covering March 2003) shall be due on April 22 with the first bi-weekly submission and subsequent accelerated monthly submission of the Form 41 Schedule P-1(a) shall be due within five business days following the month for which data are being reported;
2. If any of the responding carriers object to the public release of any of the information submitted pursuant to this Order, they shall comply with the requirements of 14 C.F.R. 302.12, provided that an airline may file one motion requesting confidential treatment for all reports submitted pursuant to this order;
3. The reporting requirements imposed by this order shall terminate on June 30, 2003, unless extended by a later Department order;
4. The reports shall be submitted directly to Randall Bennett, Director, Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street SW, Room 6401, Washington, DC 20590. Electronic submissions to the following e-mail address are strongly encouraged: X50airinfo@ost.dot.gov;

5. Each airline listed on Attachment A shall provide contact information (i.e., telephone number, pager/cellular phone number, and e-mail address) for the individual(s) designated *at its corporate headquarters* who will be responsible for the submission of these documents and who shall serve as our point of contact for any follow-up questions or clarifications;

6. Air carriers need not retain the reports covered by this order and the books, records, and other source and summary documentation supporting the reports, beyond June 30, 2003;

7. We will serve this order on all carriers listed in Attachment A.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)